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Director - Policy Matters



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**EX PARTE OR LATE FILED**

April 9, 1997

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, NW Room 222  
Washington, D.C. 20554

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OFFICE OF SECRETARY

**EX PARTE: Federal-State Joint Board on Universal Service (CC Docket No. 96-45)**

Dear Mr. Caton:

In response to a request by Commission OPP staff member Evan Kwerel, GTE submits this analysis of the 1996 Act in support of its auction proposal in the captioned docket. We have been asked to address comments made in this docket by the Rural Telephone Coalition ("RTC").

The RTC argues that the 1996 Act prohibits the Commission from adopting competitive bidding for universal service support.<sup>1</sup> RTC makes this claim based on the fact that Congress delegated the designation of eligible telecommunications carriers to the state commissions. RTC's analysis is misplaced.

RTC states that the 1996 Act "limits high-cost compensation to state-designated essential [sic] telecommunications carriers."<sup>2</sup> RTC also correctly recites the 1996 Act's requirement that state commissions make a public interest finding before they designate additional eligible telecommunications carriers in rural areas.<sup>3</sup> RTC then leaps to the conclusion that taken together these provisions of the statute preclude the Commission from adopting an auction mechanism for universal service.

Contrary to RTC's suggestion, the auction proposal that GTE has recommended to the Commission is wholly consistent with the statutory requirement that states designate carriers as eligible telecommunications carriers. To be qualified to bid under GTE's

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<sup>1</sup> RTC Comments at 26 (Aug. 2, 1996).

<sup>2</sup> *Id.* RTC erroneously refers to state-designated "essential" telecommunications carriers in this sentence, presumably based on earlier iterations of the 1996 Act using the phrase.

<sup>3</sup> See 47 U.S.C. § 214(e)(2).

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proposal, a carrier would have to be designated as an eligible telecommunications carrier by the state commission.

As GTE has demonstrated in previous filings before the Commission,<sup>4</sup> the Commission has ample authority to adopt an auction mechanism as part of the federal universal service funding mechanism. Implicit in RTC's argument appears to be the assumption that carriers that receive state designation as eligible telecommunications carriers are automatically entitled to receive federal universal service support. In fact, Congress was clear in the 1996 Act that a state's eligibility designation was a preliminary step that would not necessarily be sufficient for carriers to receive universal service support.

Under Section 214(e)(2), state commissions determine whether carriers meet the eligibility requirements required by the statute. Eligibility, however, is not synonymous with entitlement.<sup>5</sup> Thus, even if a carrier is designated as eligible under Section 214, Section 214 makes clear that eligible carriers may only receive universal service support "in accordance with Section 254."<sup>6</sup> Section 214 places no restriction on the authority of either the FCC or the state commissions to adopt any particular universal service funding mechanism that is otherwise authorized under the broad authority granted under Section 254, including auctions.<sup>7</sup>

Section 254 also supports this interpretation of the term "eligible." For example, Section 254(e) confirms that only eligible telecommunications carriers designated by state

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<sup>4</sup> Letter of Whitney Hatch, GTE Service Corp., to William F. Caton, Secretary of the FCC, CC Docket No. 96-45 (Sept. 18, 1996).

<sup>5</sup> Indeed, when Congress intended to create an entitlement in the 1996 Act, it used the term "entitled" rather than the term "eligible." Compare 47 U.S.C. § 214(e)(1) (carriers are "eligible" to receive universal service support in accordance with Section 254) with *id.* at § 254(h)(1)(A) (carriers offering service [to health care providers] shall be "entitled" to the difference between rates to health care providers and other customers in comparable rural areas). Any other interpretation of the term "eligible" would be contrary to the ordinary usage of the term. For example, Webster's Encyclopedic Unabridged Dictionary of the English Language defines "eligible" as "1. Fit or proper to be chosen; worthy of choice; desirable; *to marry an eligible bachelor*. 2. Legally qualified to be elected or appointed to office; *eligible for the presidency*..."

<sup>6</sup> 47 U.S.C. § 214(e)(1). The legislative history of Section 214 affirms that "[u]pon designation, a carrier is eligible for any specific support provided under new section 254." H.R. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. 141 (1996) ("Conference Report").

<sup>7</sup> Section 254 broadly permits the Commission to devise a federal universal service funding mechanism that is specific, predictable, and sufficient to preserve and advance universal service. *Id.* at § 254(b)(5). States may adopt state universal service funding mechanisms as long as they are not inconsistent with the federal mechanism. *Id.* at § 254(f).

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commissions shall be eligible to receive Federal universal service support, and defines how “[a] *carrier that receives such support* shall use that support” and that “*any such*

*support* should be explicit and sufficient.”<sup>8</sup> If Congress had intended designation as an eligible telecommunications carrier as a sufficient condition to receive universal service support, it could have indicated its intent in the text of the 1996 Act by using the phrase “such carrier” in place of “a carrier that receives such support.” Congress similarly could have indicated how “such support” could be used instead of how “any such support” should be used. Instead, the legislative history of the 1996 Act confirms that “[a]ny eligible telecommunications carrier that receives such support shall only use that support” for specified purposes.<sup>9</sup> This language makes clear that not every eligible telecommunications carrier necessarily will receive support. Any narrower reading of Section 214 would undermine Section 254, which certainly could not have been Congress’s intent.

Another of RTC’s concerns with an auction mechanism appears to be that there will be areas where states do not designate more than one eligible carrier, and that competitive bidding does not make sense where there is only one recipient of universal service funding. RTC extends this logical statement to overstate that “Congress plainly did not have bidding for rural high cost support in mind.”<sup>10</sup> GTE agrees that competitive bidding can only practically be implemented in areas where there are more than one competitor interested in receiving universal service support. For that reason, GTE has proposed a flexible structure by which carriers who enter an area, are designated as eltels, and are interested in receiving support can notify the state commission of their intent to bid. This, in turn, would trigger an auction in that area. Therefore, GTE’s proposal could not force an auction to occur in an area where only one eligible carrier had been designed.

In accordance with Section 1.1206(b)(1) of the Commission’s Rules, two copies of this notice are being filed with the Secretary of the FCC. Please feel free to call me if you have any questions regarding this matter.

Sincerely,

  
Sharon J. Harris

c: E. Kwerel

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<sup>8</sup> 47 U.S.C. § 254(e) (emphasis added).

<sup>9</sup> Conference Report at 131.

<sup>10</sup> RTC Comments at 26.